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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

July 14, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:99OD-011

OAHU

Acquisition of Lands and Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife for Habitat Restoration and Marsh Wildlife Sanctuary Purposes, Kawainui Marsh, Kailua, Oahu, Tax Map Keys: (1) 4-2-13:22; 4-2-16: portion 1, 5, and portion 6;

Issuance of Easements to the City & County of Honolulu and Army Corps of Engineers for Access, Maintenance, Inspection, Repair and Other Purposes as Necessitated by City & County of Honolulu's Legal Flood Control Responsibilities

APPLICANT:

Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW)

In addition, the City & County of Honolulu (City) has requested that the property be transferred from the City to the State.

LANDOWNER:

City & County of Honolulu (City)

LEGAL REFERENCE:

Sections 171-11, -30, -95 HRS, and other applicable sections; Act 314, SLH 1990, as amended by Act 47, SLH 1998.

LOCATION:

City-owned lands of Kawainui situated at Kailua, Oahu, identified by Tax Map Keys: (1) 4-2-13:22; 4-2-16: portion 1, 5, and portion 6, as shown on the attached maps labeled Exhibit A.

AREA:

693.155 acres, more or less.

ZONING:

State Land Use District: Agriculture/Conservation  
City & County of Honolulu CZO: Preservation

TRUST LAND STATUS:

Not applicable; Lands were acquired by the City from private-ownership in 1964.

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

The State is not being required to make any cash payments to the City.

PURPOSE:

Compliance with Act 314, SLH 1990, as amended by Act 47, SLH 1998 (Exhibits B & C, respectively); and

Set aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for habitat restoration and marsh wildlife sanctuary purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board involves the transfer of ownership of land that does not require the use of State funds to acquire land. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

Inasmuch as Chapter 343 environmental requirements apply to Applicant's use of the lands, the Department submitted a Management Plan dated 1994 for Kawainui Marsh as a draft Environmental Assessment. A Finding of No Significant Impact was issued and published in OEQC's Environmental Notice on April 23, 2000.

The Land Board at its meeting of January 25, 2002, under agenda item D-9, approved and amended the Department's conservation district use application for Kawainui Marsh Improvements (CDUA #OA-3068B).

CITY & COUNTY OF HONOLULU'S REQUIREMENTS:

City & County of Honolulu shall be required to:

- 1) Process and obtain subdivision at Applicant's own cost;
- 2) Provide survey maps and descriptions according to State DAGS standards including any easements for roadway, drainage, etc. in favor of the City and/or others and at no cost to the State;

- 3) Obtain a title report for the City-owned property at no cost to the State and subject to review and approval by the Department; and
- 4) Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

REMARKS:

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) is requesting the Board of Land and Natural Resources (BLNR) to approve the transfer of 693.155 acres of land commonly identified as the Kawainui Marsh. Site is further identified as TMK (1) 4-2-13:22; 4-2-16:portion 1, 5, and portion 6, as shown on the attached maps labeled Exhibit A. In addition, the City and County of Honolulu (City) has requested transfer of title to the property from the City to the State.

Kawainui Marsh is one of the largest remaining wetlands in Hawaii, encompassing an area greater than 830 acres, and serves as a critical flood control basin to protect the developed lower-lying areas of urban Kailua as well as the water quality of Kailua Bay. Moreover, the marsh's aesthetic open space is of high value to both the Windward community and the State, providing a variety of recreational and educational opportunities.

Whereas Kawainui Marsh supports a variety of introduced and indigenous aquatic wildlife as well as providing important habitat for migratory bird species and four endangered species of native Hawaiian waterbirds, the U.S. Fish and Wildlife Service has identified Kawainui Marsh as a waterbird recover area. Moreover, because three prominent heiau (Ulupo, Pahukini and Holomakani) and numerous significant archaeological sites are located within Kawainui, the entire marsh has been determined to be eligible for listing in the National Register of Historic Places.

HISTORY:

During the 1940s to 1960s, in response to frequent flooding in the Coconut Grove area of Kailua, the U.S. Army Corps of Engineers (USACE) in cooperation with the City and County of Honolulu (City) conducted studies and undertook flood control improvements, including the widening of Oneawa Canal and the construction of a levee on the makai side of Kawainui Marsh.

In April 1964, 749 acres of Kawainui Marsh was acquired by the City to prevent the private owner from pursuing residential development on 200 acres of the marsh. Conveyance to the City was via a Warranty Deed asserting that the Grantor, its successors and assigns, had and conveyed

fee title to the property, to which Grantor would warrant and defend said title against lawful claims and demands.

Shortly thereafter, the City entered into an Operation and Maintenance Manual (O&M), Kawainui Swamp Flood Protection Works with the USACE. A copy of the O&M is attached as Exhibit D.

Recognizing Kawainui Marsh as an important species habitat and the cultural resources located within, the State Department of Planning and Economic Development, Coastal Zone Management Program prepared a Resource Management Plan in 1983, which identified goals, objectives and policies, and recommended actions and measures to manage the economic, ecological and cultural resources within Kawainui Marsh.

Unfortunately the New Year's flood of 1988 resulted in severe damage to the Coconut Grove residential subdivision, prompting a reassessment of the flood control capacities of Kawainui Marsh by the USACE and the City's Department of Public Works. In response to flooding concerns, the City began dredging an open water channel through the west central portion of the marsh to improve distribution of storm water flows.

Subsequently, in 1992, USACE determined that a 4-foot raise of the existing levee and construction of a 4-foot floodwall atop the levee raise would best achieve the required flood control. Accordingly in October 1993, the City & County of Honolulu entered into a Local Cooperation Agreement (LCA) with the Department of the Army for the construction of the levee raise and floodwall as part of the Kawainui Marsh Flood Control Project. Subsequently the LCA was amended in March 1994, with the aforementioned improvements being completed in 1997. Copies of the LCA and the amendment are attached as Exhibit E.

#### LEGISLATION

Act 314, Session Laws of Hawaii (SLH) 1990, attached as Exhibit B, mandated the fee simple interest in Kawainui Marsh to be vested in the State of Hawaii, provided that the City and the USACE completed all pending flood control projects for Kawainui Marsh to the satisfaction of the DLNR and enter into any required agreements with the USACE. Furthermore, pending the transfer of Kawainui Marsh to the State, Act 314, SLH 1990 directs the State and the City to enter into an agreement allowing the State to manage the economic, ecological, and cultural resources of Kawainui Marsh pursuant to the 1983 Kawainui Marsh Resource Management Plan.

Subsequently Act 47, SLH 1998, amended Act 314 by more specifically defining the area to be conveyed to the State as TMK 4-2-16:01, less the area makai of the boundary defined as five feet from the toe of the Coconut Grove side of the flood control levee, beginning at the Oneawa Canal, and ending at the State-owned parcel identified as TMK 4-2-16:02. A copy of Act 47, SLH 1998 is attached as Exhibit C.

Accordingly, the proposed acquisition of lands referred to as Kawainui Marsh is the implementation of the aforementioned State law.

DLNR-DOFAW's PROPOSED USE:

Whereas DLNR possesses the specialized staffing and expertise to effectively manage wildlife and habitat restoration, DLNR opines it is best suited to properly manage the natural resources within Kawainui Marsh to prevent its future degradation.

Accordingly, subject to BLNR's approval of the proposed acquisition, DOFAW has agreed to assume responsibility to manage the economic, ecological and cultural resources of the marsh. It is anticipated that initial efforts will create 70 acres of mudflats and shallow ponds, and restore riparian habitat along Kahanaiki and Maunawili Streams. Moreover, DOFAW intends to focus on habitat restoration for the Hawaiian stilt and Hawaiian moorhen.

Ongoing vegetation management and clearing from certain marsh areas will improve the flood storage capacity and water quality in the marsh, and create wildlife habitat for Hawaiian waterbirds, migratory shorebirds and waterfowl. Work of this sort is already underway at Na Pohaku O Hauwahine through a cooperative program with Ahahui Malama I Ka Lokahi, utilizing community volunteers.

Pursuant to the master plan, DOFAW will be constructing open-ended fences to control feral animals, provide protection for the marsh, and to create a safer environment for the visiting public by directing public access to approved entry and exit points and deterring illegal activities within the marsh.

Total funding for the habitat restoration project is projected at \$5,097,000, consisting of State contributions totaling \$1,274,000 and an additional \$3,823,000 provided by the U.S. Army Corps of Engineers, Kawainui Marsh Environmental Restoration Project as authorized under Section 1135, Water Resource Development Act of 1986, Project Modifications for Improvement of Environment, as amended. A summary of funding sources is summarized in the table below:

SUMMARY OF FUNDING SOURCES (Kawainui Habitat Restoration)	
Federal Share (USACE):	\$3,823,000 (75%)
State Contributions:	
Design Agreement w/USACE (Paid 3/30/2004; PO# C16060)	\$188,750
CIP (Act 328, SLH 1997, as amended by Act 116, 1998, item D-3)	855,000
Pending Work-in-Kind/Land Credits (LERRD)	<u>230,250</u>
Total State Contributions	<u>1,274,000 (25%)</u>
<b>Total Estimated Costs:</b>	<b><u>\$5,097,000 (100%)</u></b>

CITY & COUNTY OF HONOLULU LEGAL RESPONSIBILITIES:

The Department recognizes that the proposed conveyance of Kawainui Marsh from the City to the State would typically result in the maintenance of all flood measures in Kawainui to be likewise transferred to the State, pursuant to HRS §46-11.5, Maintenance of channels, streambeds, streambanks and drainageways, which states:

"Notwithstanding any law to the contrary, each county shall provide for the maintenance of channels, streambeds, streambanks, and drainageways, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters; and for the removal from the channels, streambeds, streambanks, and drainageways and from the shores and beaches any debris which is likely to create an unsanitary condition or otherwise become a public nuisance; provided that to the extent any of the foregoing work is a private responsibility the responsibility may be enforced by the county in lieu of the work being done at county expense, and any private entity or person refusing to comply with any final order issued by the county shall be in violation of this chapter and be liable for a civil penalty not to exceed \$500 for each day the violation continues; provided further that it shall be the responsibility of the county to maintain all channels, streambeds, streambanks, and drainageways **unless such channels, streambeds, streambanks, and drainageways are privately owned or owned by the State, in which event such channels, streambeds, streambanks, and drainageways shall be maintained by their respective owners.** [L 1986, c 121, §2]" [Emphasis added]

However, pursuant to federal statutes and conditions and responsibilities outlined in agreements between the USACE and the City, the Department contends that legally the City has the responsibility to maintain all Kawainui related flood control measures in perpetuity.

Under 33 U.S.C. §701(c) and (s), the USACE may agree to expend funds for construction of a flood control project only after the "responsible local agencies have given assurances satisfactory to the Secretary of the Army that they will... (c) maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of the Army."

The general maintenance requirements are contained in 33 C.F.R. 280.10 which states:

"(a) General.

(1) The structures and facilities constructed by the United States for local flood protection shall be continuously maintained in such a manner and operated at such times and for such periods as may be necessary to obtain the maximum benefits.

(2) The State, political subdivision thereof, or other responsible local agency, which furnished assurance that it will maintain and operate flood control works in accordance with regulations prescribed by the Secretary of the Army, as required by law, shall appoint a permanent committee

consisting of or headed by an official hereinafter called the "Superintendent,"<sup>1</sup> who shall be responsible for the development and maintenance of, and directly in charge of, an organization responsible for the efficient operation and maintenance of all of the structures and facilities during flood periods and for continuous inspection and maintenance of the project works during periods of low water, all without cost to the United States."

The assurances provided by the City in connection with the levee improvement project are contained in the Local Cooperation Agreement (LCA) it executed in favor of the USACE. The technical requirements of the City's maintenance responsibilities are contained in the Operation and Maintenance Manual (O&M). Selected excerpts from the O&M, as well as the LCA, are provided below for your reference. Moreover, the O&M and the LCA are attached in their entirety as Exhibits D and E, respectively.

**OPERATION AND MAINTENANCE MANUAL KAWAINUI SWAMP [sic]**

"1-02 LOCAL COMMITMENT: The State of Hawaii, the City and County of Honolulu and the citizens of the town of Kailua have expressed a desire to derive maximum benefits from the flood control structure. Provisions were made whereby the City and County of Honolulu could comply with the requirements of the act and regulations by means of Joint Resolution 3 (the then Territory of Hawaii and the City and County of Honolulu), approved 6 April 1949."

"1-04 AGENCY RESPONSIBLE FOR OPERATION AND MAINTENANCE: The City and County of Honolulu has been designated by the State of Hawaii, as the "agency responsible" to carry out the required maintenance, operation and repair work of the flood control structure. Whenever the term "Chief Engineer" is used hereinafter, it shall be understood to refer to the Office of the Engineer, City and County of Honolulu." [Emphasis added]

"1-07 DUTIES OF THE CHIEF ENGINEER: The general duties of the Chief Engineer include, along with the responsibility for performance of the specific and implied duties discussed in paragraph 1-06 above and in Sections II and III, the performance of the following requirements of the regulations.

"(A) General.

(2) The State, political subdivision thereof, or other responsible local agency, which furnished assurance that it will maintain and operate flood control works in accordance with regulations prescribed by the Secretary of the Army, as required by law, shall appoint a permanent committee consisting of or headed by an official hereinafter called the "Chief Engineer" who shall be responsible for

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<sup>1</sup> At the time the O&M was created, the term used to refer to the responsible person was "Chief Engineer." This section was subsequently amended and the term "Superintendent" was substituted for "Chief Engineer."

the development and maintenance of, and directly in charge of, an organization responsible for the efficient operation and maintenance of all the structures and facilities during flood periods and for continuous inspection and maintenance of the project works during periods of low water, all without cost to the United States." [Emphasis added]

(6) It shall be the duty of the Chief Engineer to submit a semi-annual report to the District Engineer covering inspection, maintenance, and operations of the protective works.

(8) Maintenance measures or repairs which the District Engineer deems necessary shall be promptly taken or made.

(9) Appropriate measures shall be taken by local authorities to insure that the activities of all local organizations operating public or private facilities connected with the protective works are coordinated with those of the Chief Engineer's organization during flood periods."

LOCAL COOPERATION AGREEMENT - OCTOBER 3, 1993

BETWEEN DEPARTMENT OF THE ARMY (UNITED STATES ARMY CORPS OF ENGINEERS) AND THE CITY AND COUNTY OF HONOLULU

"Article II - Obligations of the Parties

a. The Government (Department of the Army), subject to and using funds provided by the Local Sponsor and appropriated by the Congress of the United States, shall expeditiously construct the Project (including relocations of railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. To the extent possible, the Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bid. To the extent possible the Local Sponsor will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the Local Sponsor, but contract awards, modifications, or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government. [Emphasis added]

b. After the Government determines that the Project or a functional portion of the Project is complete, and notifies the Local Sponsor in writing of such determination, the Government shall turn the project or functional portion over to the Local Sponsor, which shall accept the Project or functional portion and be solely responsible for operating, repairing, maintaining, replacing, and rehabilitating the project or functional portion of the Project in accordance with Article VIII hereof." [Emphasis added]



"Article VIII - Operation, maintenance, Repair, Replacement and Rehabilitation

a. After the Government Representative has determined that construction of the Project or functional portion of the Project is complete and has provided the Local Sponsor with written notice of such determination, the Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the completed Project, or functional portion of the Project, at no cost to the Government, in accordance with applicable Federal and State laws as provided in Article XII and specific directions prescribed by the Government in an OMRR&R Manual and any subsequent amendments thereto. [Emphasis added]

b. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the Local Sponsor owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Local Sponsor for any reason is failing to fulfill the Local Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If after 30 days from receipts of notice, the Local Sponsor continues to fail to perform, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Local Sponsor of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

c. The Local Sponsor shall prevent any future encroachments that might interfere with proper functioning of the project and secure Corps of Engineers' review and written approval of any planned marsh modification, including resource management plans, for hydraulic compatibility."

Pursuant to the O&M and LCA entered into by the City, the Department of the Army (USACE) stated in a letter dated June 1, 2006, "The State of Hawaii may acquire flood control maintenance responsibilities by separate agreement with the City. **However, the overall legal responsibility will remain with the City.**" [Emphasis added] A copy of the letter is attached as Exhibit F.

Accordingly, Mr. Paul Mizue, Chief of the Civil & Public Works Branch of the Department of Army, Corps of Engineers, Honolulu, provided the

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following additional comments regarding legal flood control responsibilities.

"The land ownership and maintenance for flood control are closely related but really independent. Even if the levee lands were transferred to the State in fee, the State must grant an easement for the City to allow the Corps/City to jointly inspect the facility periodically and if necessary, repair the structure.

The agreement document between the City and the Corps for the O&M do not change with change in land ownership. For example, if the City were to deed the property to say Castle and Cooke, the Corps would still look to the City for the required access and any maintenance/repair in perpetuity. It would be up to the City to assure the required access by whatever means." [Emphasis added]

Based on the federal statutes, O&M, LCA, and statements from the USACE, it appears that the legal responsibility to maintain all flood control measures within and/or around Kawainui Marsh is retained by the City & County of Honolulu in perpetuity, notwithstanding the proposed conveyance to the State.

DEED COVENANT AND ISSUANCE OF EASEMENTS TO THE CITY AND COUNTY OF HONOLULU AND ARMY CORPS OF ENGINEERS:

With respect to flood control and flood water conservation, HRS §179-4, Powers, duties, and jurisdiction of the board, authorizes the Board of Land and Natural Resources to:

1.    §179-4(4)(D), HRS "Execute and administer agreements with political subdivisions to implement state assurances of participation in federal flood control projects.";
2.    §179-4(6), HRS "With regard to projects initiated and financed entirely by political subdivisions, render coordination and aid only if requested by the respective agencies.";
3.    §179-4(7), HRS "With regard to state ownership of drainageways, coordinate the resolution of drainageway maintenance problems with the appropriate state agency or agencies."; and
4.    §179-4(8), HRS "With regard to multiple jurisdiction of drainageways, the board shall coordinate the resolution of drainageway maintenance problems with all affected political subdivisions."

Accordingly the Department recommends this proposed acquisition of lands by the State contain within said deed, a perpetual covenant regarding the City's continuing responsibility for maintenance and repair of said flood control structures and responsibility and liability for the same notwithstanding the requirements of HRS §46-11.5, subject to the review and approval by the Department of the Attorney General.

Moreover, to further assist the City and USACE in maintaining legal flood control responsibilities, the Department recommends the issuance of an easement pursuant to §171-95, HRS, providing access over all State lands of Kawainui Marsh to the City and Army Corps for, but not limited to, flood control inspection, maintenance and repair as necessitated by the City's legal flood control obligations, and subject to the review and approval of the Department of the Attorney General.

RECEIPT OF CONSERVATION EASEMENT FROM THE CITY FOR INTERIM PERIOD PRIOR TO TRANSFER:

During the interim period prior to transfer of the Kawainui Marsh in fee to the State, the Department recommends that the State request the City to immediately provide the State with a conservation easement for the purpose of allowing the State to commence economic, ecologic, and cultural management of the marsh, including commencement of the habitat restoration project discussed above. This would be in accordance with Acts 314 and 47 (Exhibits B and C, respectively).

COMMENTS SOLICITED:

Agency and community comments were received as part of the Environmental Assessment and CDUA processes. In addition, comments and input were solicited from DOFAW, Engineering Division and Division of State Parks regarding the contents of this submittal.

RECOMMENDATION: The Department requests the Board:


1. Authorize the acquisition of the subject lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current warranty deed document form, as may be amended from time to time;
  - B. A covenant regarding responsibility and liability associated with Kawainui Marsh flood control measures, including but not limited to operating, maintaining, repairing, replacing, or rehabilitating flood control facilities, in favor of the City and County of Honolulu in perpetuity;
  - C. An indemnification provision in which the City assumes sole responsibility for maintenance, operation and repair of all flood control measures associated with Kawainui Marsh, and the City agrees to indemnify, defend, and hold harmless the State for any incident, damage and loss to individuals and/or property resulting from any and all flooding of Kawainui Marsh.
  - D. Review and approval by the Department of the Attorney General;

- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 2. Authorize the issuance of a perpetual access easement to the City & County of Honolulu and the Army Corps of Engineers covering the subject area, as well as other State lands in the vicinity, for flood control management, inspection, maintenance and repair purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
    - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
    - B. Review and approval by the Department of the Attorney General; and
    - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  - 3. Authorize the acquisition of an interim conservation easement for the subject lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
    - A. The standard terms and conditions of the most current conservation easement form, as may be amended from time to time;
    - B. Review and approval by the Department of the Attorney General; and
    - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  - 4. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Land and Natural Resources, Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
    - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
    - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

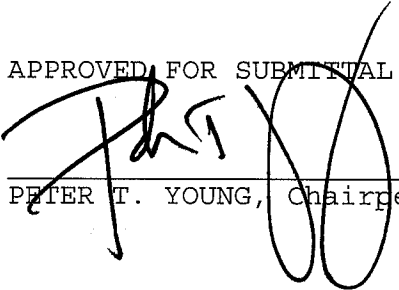
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- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
Gavin Chun  
Project Development Specialist

APPROVED FOR SUBMITTAL:

  
PETER T. YOUNG, Chairperson



**SUBJECT**  
TMK (1) 4-2-16:05

**SUBJECT**  
TMK (1) 4-2-016:06

**SUBJECT**  
TMK (1) 4-2-16: por. 01

General Location of  
Model Airplane Field  
Not Included in Conveyance  
TMK (1) 4-2-16: por 01

Scale: 1 inch = 900 ft.

[illegible]

**SUBJECT**  
TMK (1) 4-2-16:05

**SUBJECT**  
TMK (1) 4-2-16:06

**SUBJECT**  
TMK (1) 4-2-16: por. 01

**General Location of  
Model Airplane Field  
Not Included in Conveyance  
TMK (1) 4-2-16: por 01**

FIRST	DIVISION	PLAT
4	2	16

CONTAINING PARCELS  
SCALE: 1 in = 300 ft.

NOTICE: This map was prepared by the Department of Land and Natural Resources, State of Hawaii, under contract to the Office of Planning and Development.

[illegible][illegible]

ACT 314

ACT 314

S.B. NO. 3127

A Bill for an Act Relating to Parks.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The estate, right, title, and interest, and any appurtenance thereto, of the city and county of Honolulu relating to Kawainui Marsh, tax map key no. 4-2-16:1, lot 2-b, less the community park area, shall be vested in the State in fee simple; provided that the city and county of Honolulu and the United States Army Corps of Engineers shall have first completed all pending flood control projects for Kawainui Marsh to the satisfaction of the department of land and natural resources; provided further that at the time of the transfer of Kawainui Marsh to the State, the State shall enter into any required operation or maintenance agreements, or both, with the United States Army Corps of Engineers.

Pending the completion of the transfer of Kawainui Marsh to the State, the State and the city and county of Honolulu shall enter into a management lease, license agreement, or other similar agreement to enable the department of land and natural resources, on behalf of the State, to manage the economic, ecological, and cultural resources of Kawainui Marsh as provided in the 1983 Kawainui Marsh resource management plan. The lease or agreement shall provide for the notification of the city and county of Honolulu of any undertaking relating to the operation and maintenance of Kawainui Marsh and allow the city and county of Honolulu the opportunity for review of the effect of the proposed undertaking.

SECTION 2. This Act shall take effect upon its approval.

(Approved July 3, 1990.)

ACT 315

H.B. NO. 3403

A Bill for an Act Relating to Forest Reserves.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature notes that widespread combustion of fossil fuels and the accelerating destruction of forests worldwide have dramatically altered the composition of earth's atmospheric gases. These changes, according to scientific consensus, will likely change global climatic conditions, eventually leading to dramatic temperature increases, altered rainfall patterns, and a pronounced sea level rise. Such climatic related changes may have profound, and in some cases, devastating impacts on our society. As global warming accelerates, the resulting sea level rise could wreak havoc on our populous coastal zone, drowning many coastal communities, killing protective marshlands and reefs, and submerging entire Pacific island communities. Changes in rainfall and temperature could alter both marine and terrestrial ecosystems, eliminating many local fisheries, and shifting agricultural belts worldwide. It is estimated that these changes will lead to major population redistribution and incalculable economic loss.

The legislature further notes there is an emerging consensus among scientists, environmentalists, government officials, and foresters that widespread



**ACT 48****ACT 47**

H.B. NO. 2883

A Bill for an Act Relating to Kawainui Marsh.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 314, Session Laws of Hawaii 1990, is amended by amending section 1 to read as follows:

"SECTION 1. The estate, right, title, and interest, and any appurtenance thereto, of the city and county of Honolulu relating to Kawainui Marsh, tax map key no. 4-2-16:1, lot 2-b, less the [community park] area[,] makai of the boundary defined as five feet from the toe of the Coconut Grove side of the flood control levee, beginning at the Oneawa Canal and ending at the State-owned parcel identified by tax map key number 4-2-16:02, lot A, shall be vested in the State in fee simple; provided that the city and county of Honolulu and the United States Army Corps of Engineers shall have first completed all pending flood control projects for Kawainui Marsh to the satisfaction of the department of land and natural resources; provided further that at the time of the transfer of Kawainui Marsh to the State, the State shall enter into any required operation or maintenance agreements, or both, with the United States Army Corps of Engineers.

Pending the completion of the transfer of Kawainui Marsh to the State, the State and the city and county of Honolulu shall enter into a management lease, license agreement, or other similar agreement to enable the department of land and natural resources, on behalf of the State, to manage the economic, ecological, and cultural resources of Kawainui Marsh as provided in the 1983 Kawainui Marsh resource management plan. The lease or agreement shall provide for the notification of the city and county of Honolulu of any undertaking relating to the operation and maintenance of Kawainui Marsh and allow the city and county of Honolulu the opportunity for review of the effect of the proposed undertaking."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 29, 1998.)

**ACT 48**

H.B. NO. 2899

A Bill for an Act Relating to Donations to Government Agencies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 92-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
- (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided

OPERATION AND MAINTENANCE  
MANUAL

KAWAINUI SWAMP  
FLOOD PROTECTION WORKS  
KAILUA, ISLAND OF OAHU  
HAWAII

U. S. ARMY ENGINEER DISTRICT, HONOLULU  
CORPS OF ENGINEERS  
HONOLULU, HAWAII

*Rtn to File "Flood Inspection - Oahu"*

EXHIBIT "D"

## INTRODUCTION

The need for a flood control structure to protect the town of Kailua, Oahu, from flood waters of the Kawainui Swamp has been recognized for a long time. The dedicated efforts of many persons over a considerable period of time have contributed to the present realization of long held hopes.

On 26 June 1964, the U. S. Army Engineer District, Honolulu, Corps of Engineers, entered into a contract with a construction firm, W. T. Chang Contractors, Inc., Honolulu, Hawaii, for the construction of the Flood Control Project for the Kawainui Swamp, Kailua, Island of Oahu, Hawaii. This contract, No. DA-94-612-CIVENG-64-15, is on file at the Office of the District Engineer in Building 96, Fort Armstrong, Honolulu, Hawaii.

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## SECTION I

### OPERATIONAL REQUIREMENTS

1-01 LEGISLATION AND REGULATIONS: Under the Flood Control Act of 1944 as amended and supplemented, the City and County of Honolulu has agreed to maintain and operate the flood control structure in accordance with the applicable legislation and the regulations prescribed by the Secretary of the Army, the provisions of which are intended to be applicable to all local flood protection projects for which such regulations are required by law. The regulations are contained in Section 208.10, Title 33, of the Code of Federal Regulations, a copy of which is reproduced as "Exhibit A" of this manual.

1-02 LOCAL COMMITMENT: The State of Hawaii, the City and County of Honolulu and the citizens of the town of Kailua have expressed a desire to derive maximum benefits from the flood control structure. Provisions were made whereby the City and County of Honolulu could comply with the requirements of the act and regulations by means of Joint Resolution 3 (the then Territory of Hawaii and the City and County of Honolulu), approved 6 April 1949.

1-03 REQUIREMENT FOR MANUAL: Section 208.10(a)(10) of Title 33, Code of Federal Regulations, reads as follows:

"The War Department (now the Department of the Army) will furnish local interests with an Operations and Maintenance Manual for each completed project, or separate useful part thereof, to assist them in carrying out their obligations under these regulations."

This manual has, therefore, been prepared to furnish local interests with information on the project works and advice as to the details of the operational and maintenance requirements in order that the persons responsible for the project operation and maintenance requirements will have a clear understanding of the duties involved.

1-04 AGENCY RESPONSIBLE FOR OPERATION AND MAINTENANCE: The City and County of Honolulu has been designated by the State of Hawaii, as the "agency responsible" to carry out the required maintenance, operation and repair work of the flood control structure. Whenever the term "Chief Engineer" is used hereinafter, it shall be understood to refer to the Office of the Engineer, City and County of Honolulu.

1-05 INTEREST OF THE UNITED STATES: In all matters pertaining to the construction of and continuing interest in the flood control project, the United States is represented by the District Engineer. The term "District Engineer" shall be understood to mean the District Engineer, U. S. Army Engineer District, Honolulu, Corps of Engineers, or his authorized representative.

1-06 GENERAL RULES AND PROCEDURES: General Procedures applicable to the prescribed operation and maintenance of the project are set forth in the following quotations from the regulations:

"(a) General.

- (1) The structures and facilities constructed by the United States for local flood protection shall be continuously maintained in such manner and operated at such times and for such periods as may be necessary to obtain the maximum benefits.

\* \* \* \* \*

- (3) A reserve supply of materials needed during a flood emergency shall be kept on hand at all times.
- (4) No encroachment or trespass which will adversely affect the efficient operation or maintenance of the project works shall be permitted upon the rights-of-way for the protective facilities.
- (5) No improvement shall be passed over, under, or through the levees, improved channels or floodways, nor shall any excavation or construction be permitted within the limits of the project right of way, nor shall any change be made in any feature of the works without prior determination by the District Engineer or his authorized representative that such improvement, excavation, construction, or alteration will not adversely affect the functioning of the protective facilities. Such improvements or alterations as may be found to be desirable and permissible under the above determination shall be constructed in accordance with standard Engineering practice. Advice regarding the effect of the proposed improvements or alterations on the functioning of the project and information concerning methods of construction acceptable under standard engineering practice shall be obtained from the District Engineer or, if otherwise obtained, shall be submitted for his approval. Drawings or prints showing such improvements or alterations as finally constructed shall be furnished the District Engineer after completion of the work.

\* \* \* \* \*

- (7) The District Engineer or his authorized representative shall have access at all times to all portions of the protective works."

1-07 DUTIES OF THE CHIEF ENGINEER: The general duties of the Chief Engineer include, along with the responsibility for performance of the specific and implied duties discussed in paragraph 1-06 above and in Sections II and III, the performance of the following requirements of the regulations.

"(A) General.

\* \* \* \* \*

- (2) The State, political subdivision thereof, or other responsible local agency, which furnished assurance that it will maintain and operate flood control works in accordance with regulations prescribed by the Secretary of the Army, as required by law, shall appoint a permanent committee consisting of or headed by an official hereinafter called the "Chief Engineer" who shall be responsible for the development and maintenance of, and directly in charge of, an organization responsible for the efficient operation and maintenance of all the structures and facilities during flood periods and for continuous inspection and maintenance of the project works during periods of low water, all without cost to the United States.

\* \* \* \* \*

\* \* \* \* \*

\* \* \* \* \*

- (6) It shall be the duty of the Chief Engineer to submit a semi-annual report to the District Engineer covering inspection, maintenance, and operations of the protective works.

\* \* \* \* \*

- (8) Maintenance measures or repairs which the District Engineer deems necessary shall be promptly taken or made.
- (9) Appropriate measures shall be taken by local authorities to insure that the activities of all local organizations operating public or private facilities connected with the protective works are coordinated with those of the Chief Engineer's organization during flood periods."

1-08 REPORTS: The semi-annual report, referred to in paragraph 208.10a(6) of the regulations, shall be submitted by the Office of the Engineer, City and County of Honolulu, to the District Engineer, U. S. Army Engineer District, Honolulu, Building 96, Fort Armstrong, Honolulu, Hawaii 96813, for the periods ending 30 June and 15 December. This report shall cover inspection, maintenance and operation of the flood protection project; a sample is included in APPENDIX II. In case of an emergency or extraordinary condition, special reports will also be made. Inspection reports, a sample of which is included in APPENDIX II, should accompany the semi-annual report. All information should be given accurately, and additional sheets and sketches should be added as required to clearly convey the desired information.

1-09 INSPECTIONS: The Office of the Engineer, City and County of Honolulu, shall make inspections of the features, as required in Sections II and III, immediately prior to the flood season (the normal flood season is the period November through March), immediately following each major high water period, at intervals not exceeding 90 days, and at such intermediate times as may be necessary to insure the best possible care of the structure.

1-10 SEQUENCE OF OPERATIONS: Maintenance operations shall be performed regularly, and in no case less often than annually, as required to retain the project in good operating condition. Normal maintenance shall be performed generally prior to the flood season in order that the works will be in best condition to withstand floods. Emergency maintenance shall be performed promptly after major damage occurs.



## SECTION II

### ROUTINE MAINTENANCE AND OPERATION

2-01 STRUCTURAL FEATURES: The principle features of the flood control structure are earth levees and an excavated channel. Both the levees and the channel are lined as necessary with rip-rap or crushed stone on the side slopes. Where no stone protection exists, the slopes are grassed.

a. Left Bank Levee: This short levee begins at a point 400 feet southwest of Ilipio Street and extends a distance of 700 feet in the same direction to the terminal point of the excavated channel.

b. Right Bank Levee: This levee begins at the Pali Highway approximately 1,100 feet southwest of the Kaelepulu Stream bridge in Kailua Town and progresses northwest, skirting the Kawainui Swamp, a total distance of approximately 8,000 feet, terminating near Oneawa Street.

c. Excavated Channel: The excavated channel begins at the ocean, a distance of approximately 3,600 feet seaward of the Kalaheo Street Bridge, progresses in a southwesterly direction between Kainui Drive and Mokapu Boulevard a total distance of 9,100 feet where it terminates at the edge of the Kawainui Swamp. The side slopes of the channel are faced, where necessary, with crushed stone; all other exposed areas are grassed. Certain details of the Left and Right Bank Levees and the excavated channel as constructed, are indicated on the drawings included herein as APPENDIX I, Plates 1 and 1-A.

2-02 MAINTAINING THE LEVEES: Care must be taken to maintain the structural integrity of the levees. Whenever any portion of the stone revetment becomes displaced by any means whatsoever, it shall be replaced in a manner as nearly approximating original as possible, giving attention to type and size of stone and the grades and cross sections as originally constructed and as shown on the drawings.

2-03 MAINTAINING THE CHANNEL SLOPES: The maintenance of the channel slopes shall approximate the care described above for the levees. Particular emphasis is placed on maintaining the grassed areas to forestall erosion.

2-04 MAINTAINING THE DRAINAGE STRUCTURES: The drainage pipes shall be kept free of sand or silt deposits and plant growth. The flap gates shall be kept free of impediment to move and shall be periodically checked for operating conditions. All metal parts shall be either kept painted or greased as applicable.

2-05 MAINTAINING THE DRAINAGE AREAS: The swamp drainage area shall be maintained as required to facilitate the movement of water during flooding. The areas shall be kept free from cut brush piles and tree trunks or other material that might restrict water flow or tend to clog the structure further downstream.

2-06 APPLICABLE REGULATIONS ON MAINTENANCE AND OPERATION:

a. Maintenance. The applicable sections of the regulations pertaining to maintenance are quoted as follows:

"(1) Maintenance. The Chief Engineer shall provide at all times such maintenance as may be required to insure serviceability of the structures in time of flood. Measures shall be taken to promote the growth of sod, exterminate burrowing animals, and to provide for routine mowing of the grass and weeds, removal of wild growth and drift deposits, and repair of damage caused by erosion or other forces. \* \* \* \* \* Periodic inspections shall be made by the Chief Engineer to insure that the above maintenance measures are being effectively carried out and, further to be certain that:

- (i) No unusual settlement, sloughing, or material loss of grade or levee cross section has taken place;
- (ii) No caving has occurred on either the land side or the river side of the levee which might affect the stability of the levee section;
- (iii) No seepage, saturated areas, or sand boils are occurring;

\* \* \* \* \*

- (v) Drains through the levees are in good working condition;
- (vi) No revetment work or riprap has been displaced, washed out, or removed;
- (vii) No action is being taken, such as burning grass and weeds during inappropriate seasons, which will retard or destroy the growth of sod;
- (viii) Access roads to and on the levee are being properly maintained;

\* \* \* \* \*

- (x) Crown of levee is shaped so as to drain readily, and roadway thereon, if any, is well shaped and maintained;
- (xi) There is no unauthorized grazing or vehicular traffic on the levees;
- (xii) Encroachments are not being made on the levee - right-of-way which might endanger the structure or hinder its proper and efficient functioning during times of emergency.

Such inspections shall be made immediately prior to the beginning of the flood season, immediately following each major high water period, and otherwise at intervals not exceeding 90 days, and such intermediate times as may be necessary to insure the best possible care of the levee. Immediate steps will be taken to correct dangerous conditions disclosed by such inspections. Regular maintenance repair measures shall be accomplished during the appropriate season as scheduled by the Superintendent."

b. Operation: Operation shall be in accordance with the following sections of the regulations:

- "(2) Operation. During flood periods the levee shall be patrolled continuously to locate possible sand boils or unusual wetness of the landward slope and to be certain that:
- (i) There are no indications of slides or sloughs developing;
  - (ii) Wave wash or scouring action is not occurring;
  - (iii) No low reaches of levee exist which may be overtopped;
  - (iv) No other conditions exist which might endanger the structure.

Appropriate advance measures will be taken to insure the availability of adequate labor and materials to meet all contingencies."

2-07 EMERGENCY OPERATIONAL PLANNING: Grave disasters have resulted from improper emergency operational planning. A contributing factor is the need to protect materials and devices from pranksters and vandals. The material and equipment required to operate the structure must be protected without making them unavailable in emergencies.

It shall be the duty of the Chief Engineer to make certain that successful operation of the structure under flood conditions does not depend on the presence or availability of any one person.

Good planning is a requirement for successful emergency operation by qualified personnel. Such a plan shall be devised and tested, paying particular attention to mobilization, communications, and access to materials and equipment.

More difficult is the planning for operation of the structure under the assumption that no experienced personnel will be available. A logical plan has a better chance than one which contains ambiguities. Be logical. The best way to assure that persons unknown will properly carry out basic requirements is to make certain that the required basic knowledge is widely held. Schools, churches, clubs, etc. will gladly cooperate in this effort. Be certain that the location of, and use for, bags, sand, shovels, etc., is known to as many persons as possible.

### SECTION III

#### SPECIAL REQUIREMENTS FOR FLOOD CONDITIONS

3-01 FLOOD WARNING: It shall be the responsibility of the Chief Engineer and other authorities concerned with the operation of the flood control project to insure that all forecasts of storms likely to cause floods shall be promptly received and to disseminate such information to the populace of the affected areas.

3-02 OPERATION DURING FLOOD: Upon receipt of flood warnings the Chief Engineer shall, initiate patrolling of the levees; take advance measures to insure the availability of adequate facilities to comply with the maintenance and operation requirements.

3-03 MAINTENANCE DURING FLOODS: Immediate steps shall be taken to control any condition which endangers the levee. The following procedures should be followed:

a. Sand Boils. A sand boil which discharges clear water in a steady flow is usually not dangerous to the levee. The only action necessary in this case is to drain the excess water away to prevent it from standing near the levee. However, if the boil begins to show muddy water, it shall be ringed with sand bags as shown on APPENDIX I, Plate 2. Rings need be built only high enough to materially decrease flow and prevent material from being discharged by the boil.

b. Overtopping of Levees. If the freeboard at any location shows evidence of inadequacy, immediate steps shall be taken to raise the levee in that vicinity to prevent overtopping. The crown of the levee may be built-up by sand bagging. This method is shown on APPENDIX I, Plate 3.

c. Seepage. Seepage manifests its presence by causing excessively wet and soggy areas to develop along the landward slope of the levee. Seepage shall be partially controlled by seep drains or brush mattress. Seep drains are small "V" shaped drains not more than 4 inches deep, which are cut from the seepage area sloping diagonally down the levee slope to natural ground and thence away from the levee. When seepage cannot be adequately controlled by seep drains, a brush mattress shall be placed over the critical area as shown on APPENDIX I, Plate 4. This will control possible sliding of the area toward the toe.

3-04 STOCKPILING OF MATERIALS: The Chief Engineer will maintain

a reserve stockpile of not less than 5,000 sand bags in the town of Kailua.  
The source of repair materials will be inventoried in advance.

Exhibit "A"

Title 33 - Sec. 208.10)

Appendix I

Plates 1, 1-A, Improvements as constructed

Plate 2, Method of Ringing Boils

Plate 3, Method of High Water Sack Topping

Plate 4, Method of Brush Mattress

Appendix II

Sample, Semi-annual Report

Sample, Inspection Report

# TITLE 33—NAVIGATION AND NAVIGABLE WATERS

## Chapter II—Corps of Engineers, War Department

### PART 208—FLOOD CONTROL REGULATIONS MAINTENANCE AND OPERATION OF FLOOD CONTROL WORKS

Pursuant to the provisions of section 3 of the Act of Congress approved June 22, 1936, as amended and supplemented (49 Stat. 1571; 50 Stat. 877; and 55 Stat. 638; 33 U. S. C. 701c; 701c-1), the following regulations are hereby prescribed to govern the maintenance and operation of flood control works:

§ 208.10 *Local flood protection works; maintenance and operation of structures and facilities*—(a) *General.* (1) The structures and facilities constructed by the United States for local flood protection shall be continuously maintained in such a manner and operated at such times and for such periods as may be necessary to obtain the maximum benefits.

(2) The State, political subdivision thereof, or other responsible local agency, which furnished assurance that it will maintain and operate flood control works in accordance with regulations prescribed by the Secretary of War, as required by law, shall appoint a permanent committee consisting of or headed by an official hereinafter called the "Superintendent," who shall be responsible for the development and maintenance of, and directly in charge of, an organization responsible for the efficient operation and maintenance of all of the structures and facilities during flood periods and for continuous inspection and maintenance of the project works during periods of low water, all without cost to the United States.

(3) A reserve supply of materials needed during a flood emergency shall be kept on hand at all times.

(4) No encroachment or trespass which will adversely affect the efficient operation or maintenance of the project works shall be permitted upon the right-of-way for the protective facilities.

(5) No improvement shall be passed over, under, or through the walls, levees, improved channels or floodways, nor shall any excavation or construction be permitted within the limits of the project right-of-way, nor shall any change be made in any feature of the works without prior determination by the District Engineer of the War Department or his authorized representative that such improvement, excavation, construction, or alteration will not adversely affect the functioning of the protective facilities. Such improvements or alterations as may be found to be desirable and permissible under the above determination shall be constructed in accordance with standard engineering practice. Advice regarding the effect of proposed improvements or alterations on the functioning of the project and information concerning methods of construction acceptable under standard engineering practice shall be obtained from the District Engineer or, if otherwise obtained, shall be submitted for his approval. Drawings or prints showing such improvements or alterations as finally constructed shall be furnished the District Engineer after completion of the work.

(6) It shall be the duty of the Superintendent to submit a semiannual report to the District Engineer covering inspection, maintenance, and operation of the protective works.

(7) The District Engineer or his authorized representatives shall have access at all times to all portions of the protective works.

(8) Maintenance measures or repairs which the District Engineer deems necessary shall be promptly taken or made.

(9) Appropriate measures shall be taken by local authorities to insure that the activities of all local organizations operating public or private facilities connected with the protective works are coordinated with those of the Superintendent's organization during flood periods.

(10) The War Department will furnish local interests with an Operation and Maintenance Manual for each completed project, or separate useful part thereof, to assist them in carrying out their obligations under these regulations.

(b) *Levees*—(1) *Maintenance.* The Superintendent shall provide at all times such maintenance as may be required to insure serviceability of the structures in time of flood. Measures shall be taken to promote the growth of sod, exterminate burrowing animals, and to provide for routine mowing of the grass and weeds, removal of wild growth and drift deposits, and repair of damage caused by erosion or other forces. Where practicable, measures shall be taken to retard bank erosion by planting of willows or other suitable growth on areas riverward of the levees. Periodic inspections shall be made by the Superintendent to insure that the above maintenance measures are being effectively carried out and, further, to be certain that:

(i) No unusual settlement, sloughing, or material loss of grade or levee cross section has taken place;

(ii) No caving has occurred on either the land side or the river side of the levee which might affect the stability of the levee section;

(iii) No seepage, saturated areas, or sand boils are occurring;

(iv) Toe drainage systems and pressure relief wells are in good working condition, and that such facilities are not becoming clogged;

(v) Drains through the levees and gates on said drains are in good working condition;

(vi) No revetment work or riprap has been displaced, washed out, or removed;

(vii) No action is being taken, such as burning grass and weeds during inappropriate seasons, which will retard or destroy the growth of sod;

(viii) Access roads to and on the levee are being properly maintained;

(ix) Cattle guards and gates are in good condition;

(x) Crown of levee is shaped so as to drain readily, and roadway thereon, if any, is well shaped and maintained;

(xi) There is no unauthorized grazing or vehicular traffic on the levees;

(xii) Encroachments are not being made on the levee right-of-way which might endanger the structure or hinder its proper and efficient functioning during times of emergency.

Such inspections shall be made immediately prior to the beginning of the flood season; immediately following each major high water period, and otherwise at intervals not exceeding 90 days, and such intermediate times as may be necessary to insure the best possible care of

the levee. Immediate steps will be taken to correct dangerous conditions disclosed by such inspections. Regular maintenance repair measures shall be accomplished during the appropriate season as scheduled by the Superintendent.

(2) *Operation.* During flood periods the levee shall be patrolled continuously to locate possible sand boils or unusual wetness of the landward slope and to be certain that:

(i) There are no indications of slides or sloughs developing;

(ii) Wave wash or scouring action is not occurring;

(iii) No low reaches of levee exist which may be overtopped;

(iv) No other conditions exist which might endanger the structure.

Appropriate advance measures will be taken to insure the availability of adequate labor and materials to meet all contingencies. Immediate steps will be taken to control any condition which endangers the levee and to repair the damaged section.

(c) *Flood walls*—(1) *Maintenance.* Periodic inspections shall be made by the Superintendent to be certain that:

(i) No seepage, saturated areas, or sand boils are occurring;

(ii) No undue settlement has occurred which affects the stability of the wall or its water tightness;

(iii) No trees exist, the roots of which might extend under the wall and offer accelerated seepage paths;

(iv) The concrete has not undergone cracking, chipping, or breaking to an extent which might affect the stability of the wall or its water tightness;

(v) There are no encroachments upon the right-of-way which might endanger the structure or hinder its functioning in time of flood;

(vi) Care is being exercised to prevent accumulation of trash and debris adjacent to walls, and to insure that no fires are being built near them;

(vii) No bank caving conditions exist riverward of the wall which might endanger its stability;

(viii) Toe drainage systems and pressure relief wells are in good working condition, and that such facilities are not becoming clogged.

Such inspections shall be made immediately prior to the beginning of the flood season, immediately following each major high water period, and otherwise at intervals not exceeding 90 days. Measures to eliminate encroachments and effect repairs found necessary by such inspections shall be undertaken immediately. All repairs shall be accomplished by methods acceptable in standard engineering practice.

(2) *Operation.* Continuous patrol of the wall shall be maintained during flood periods to locate possible leakage at monolith joints or seepage underneath the wall. Floating plant or boats will not be allowed to lie against or tie up to the wall. Should it become necessary during a flood emergency to pass anchor cables over the wall, adequate measures shall be taken to protect the concrete and construction joints. Immediate steps shall be taken to correct any condition which endangers the stability of the wall.

(d) *Drainage structures*—(1) *Maintenance.* Adequate measures shall be taken to insure that inlet and outlet channels are kept open and that trash, drift, or debris is not allowed to accumulate near drainage structures. Flap gates and manually operated gates and valves on

drainage structures shall be examined, oiled, and trial operated at least once every 90 days. Where drainage structures are provided with stop log or other emergency closures, the condition of the equipment and its housing shall be inspected regularly and a trial installation of the emergency closure shall be made at least once each year. Periodic inspections shall be made by the Superintendent to be certain that:

(b) Pipes, gates, operating mechanism, riprap, and headwalls are in good condition;

(c) Inlet and outlet channels are open;

(d) Care is being exercised to prevent the accumulation of trash and debris near the structures and that no fires are being built near bituminous coated pipes;

(e) Erosion is not occurring adjacent to the structure which might endanger its water tightness or stability.

Immediate steps will be taken to repair damage, replace missing or broken parts, or remedy adverse conditions disclosed by such inspections.

(2) *Operation.* Whenever high water conditions impend, all gates will be inspected a short time before water reaches the invert of the pipe and any object which might prevent closure of the gate shall be removed. Automatic gates shall be closely observed until it has been ascertained that they are securely closed. Manually operated gates and valves shall be closed as necessary to prevent inflow of flood water. All drainage structures in levees shall be inspected frequently during floods to ascertain whether seepage is taking place along the lines of their contact with the embankment. Immediate steps shall be taken to correct any adverse condition.

(c) *Closure structures.*—(1) *Maintenance.* Closure structures for traffic openings shall be inspected by the superintendent every 90 days to be certain that:

(i) No parts are missing;

(ii) Metal parts are adequately covered with paint;

(iii) All movable parts are in satisfactory working order;

(iv) Proper closure can be made promptly when necessary;

(v) Sufficient materials are on hand for the erection of sand bag closures and that the location of such materials will be readily accessible in times of emergency.

Tools and parts shall not be removed for other use. Trial erections of one or more closure structures shall be made once each year, alternating the structures chosen so that each gate will be erected at least once in each 3-year period. Trial erection of all closure structures shall be made whenever a change is made in key operating personnel. Where railroad operation makes trial erection of a closure structure infeasible, rigorous inspection and drill of operating personnel may be substituted therefor. Trial erection of sand bag closures is not required. Closure materials will be carefully checked prior to and following flood periods, and damaged or missing parts shall be repaired or replaced immediately.

(2) *Operation.* Erection of each movable closure shall be started in sufficient time to permit completion before flood waters reach the top of the structure sill. Information regarding the proper method of erecting each individual closure structure, together with an estimate of the time required by an experienced crew to complete its erection will be given

in the Operation and Maintenance Manual which will be furnished local interests upon completion of the project. Closure structures will be inspected frequently during flood periods to ascertain that no undue leakage is occurring and that drains provided to care for ordinary leakage are functioning properly. Boats or floating plant shall not be allowed to tie up to closure structures or to discharge passengers or cargo over them.

(f) *Pumping plants.*—(1) *Maintenance.* Pumping plants shall be inspected by the Superintendent at intervals not to exceed 30 days during flood seasons and 90 days during off-flood seasons to insure that all equipment is in order for instant use. At regular intervals, proper measures shall be taken to provide for cleaning plant, buildings, and equipment, repainting as necessary, and lubricating all machinery. Adequate supplies of lubricants for all types of machines, fuel for gasoline or diesel powered equipment, and flash lights or lanterns for emergency lighting shall be kept on hand at all times. Telephone service shall be maintained at pumping plants. All equipment, including switch gear, transformers, motors, pumps, valves, and gates shall be trial operated and checked at least once every 90 days. Megger tests of all insulation shall be made whenever wiring has been subjected to undue dampness and otherwise at intervals not to exceed one year. A record shall be kept showing the results of such tests. Wiring disclosed to be in an unsatisfactory condition by such tests shall be brought to a satisfactory condition or shall be promptly replaced. Diesel and gasoline engines shall be started at such intervals and allowed to run for such length of time as may be necessary to insure their serviceability in times of emergency. Only skilled electricians and mechanics shall be employed on tests and repairs. Operating personnel for the plant shall be present during tests. Any equipment removed from the station for repair or replacement shall be returned or replaced as soon as practicable and shall be trial operated after reinstallation. Repairs requiring removal of equipment from the plant shall be made during off-flood seasons insofar as practicable.

(2) *Operation.* Competent operators shall be on duty at pumping plants whenever it appears that necessity for pump operation is imminent. The operator shall thoroughly inspect, trial operate, and place in readiness all plant equipment. The operator shall be familiar with the equipment manufacturers' instructions and drawings and with the "Operating Instructions" for each station. The equipment shall be operated in accordance with the above-mentioned "Operating Instructions" and care shall be exercised that proper lubrication is being supplied all equipment, and that no overheating, undue vibration or noise is occurring. Immediately upon final recession of flood waters, the pumping station shall be thoroughly cleaned, pump house sumps flushed, and equipment thoroughly inspected, oiled and greased. A record or log of pumping plant operation shall be kept for each station, a copy of which shall be furnished the District Engineer following each flood.

(g) *Channels and floodways.*—(1) *Maintenance.* Periodic inspections of improved channels and floodways shall be made by the Superintendent to be certain that:

(i) The channel or floodway is clear of debris, weeds, and wild growth;

(ii) The channel or floodway is not being restricted by the depositing of waste materials, building of unauthorized structures or other encroachments;

(iii) The capacity of the channel or floodway is not being reduced by the formation of shoals;

(iv) Banks are not being damaged by rain or wave wash, and that no sloughing of banks has occurred;

(v) Riprap sections and deflection dikes and walls are in good condition;

(vi) Approach and egress channels adjacent to the improved channel or floodway are sufficiently clear of obstructions and debris to permit proper functioning of the project works.

Such inspections shall be made prior to the beginning of the flood season and otherwise at intervals not to exceed 90 days. Immediate steps will be taken to remedy any adverse conditions disclosed by such inspections. Measures will be taken by the Superintendent to promote the growth of grass on bank slopes and earth deflection dikes. The Superintendent shall provide for periodic repair and cleaning of debris basins, check dams, and related structures as may be necessary.

(2) *Operation.* Both banks of the channel shall be patrolled during periods of high water, and measures shall be taken to protect those reaches being attacked by the current or by wave wash. Appropriate measures shall be taken to prevent the formation of jams of ice or debris. Large objects which become lodged against the bank shall be removed. The improved channel or floodway shall be thoroughly inspected immediately following each major high water period. As soon as practicable thereafter, all snags and other debris shall be removed and all damage to banks, riprap, deflection dikes and walls, drainage outlets, or other flood control structures repaired.

(h) *Miscellaneous facilities.*—(1) *Maintenance.* Miscellaneous structures and facilities constructed as a part of the protective works and other structures and facilities which function as a part of, or affect the efficient functioning of the protective works, shall be periodically inspected by the Superintendent and appropriate maintenance measures taken. Damaged or unserviceable parts shall be repaired or replaced without delay. Areas used for ponding in connection with pumping plants or for temporary storage of interior run-off during flood periods shall not be allowed to become filled with silt, debris, or dumped material. The Superintendent shall take proper steps to prevent restriction of bridge openings and, where practicable, shall provide for temporary raising during floods of bridges which restrict channel capacities during high flows.

(2) *Operation.* Miscellaneous facilities shall be operated to prevent or reduce flooding during periods of high water. Those facilities constructed as a part of the protective works shall not be used for purposes other than flood protection without approval of the District Engineer unless designed therefor. (49 Stat. 1571, 50 Stat. 877; and 55 Stat. 638; 33 U.S.C. 701c; 701c-1) (Regs. 9 August 1944, CE SFEWF)

[SEAL]

J. A. ULIO,  
Major General,  
The Adjutant General.

[F. R. Dec. 44-12285; Filed, August 10, 1944;  
9:44 a.m.]

EXHIBIT "A" Sheet 2 of 2

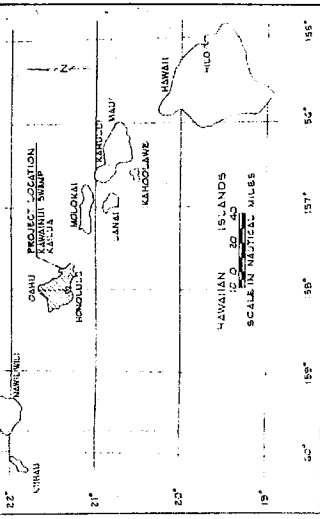
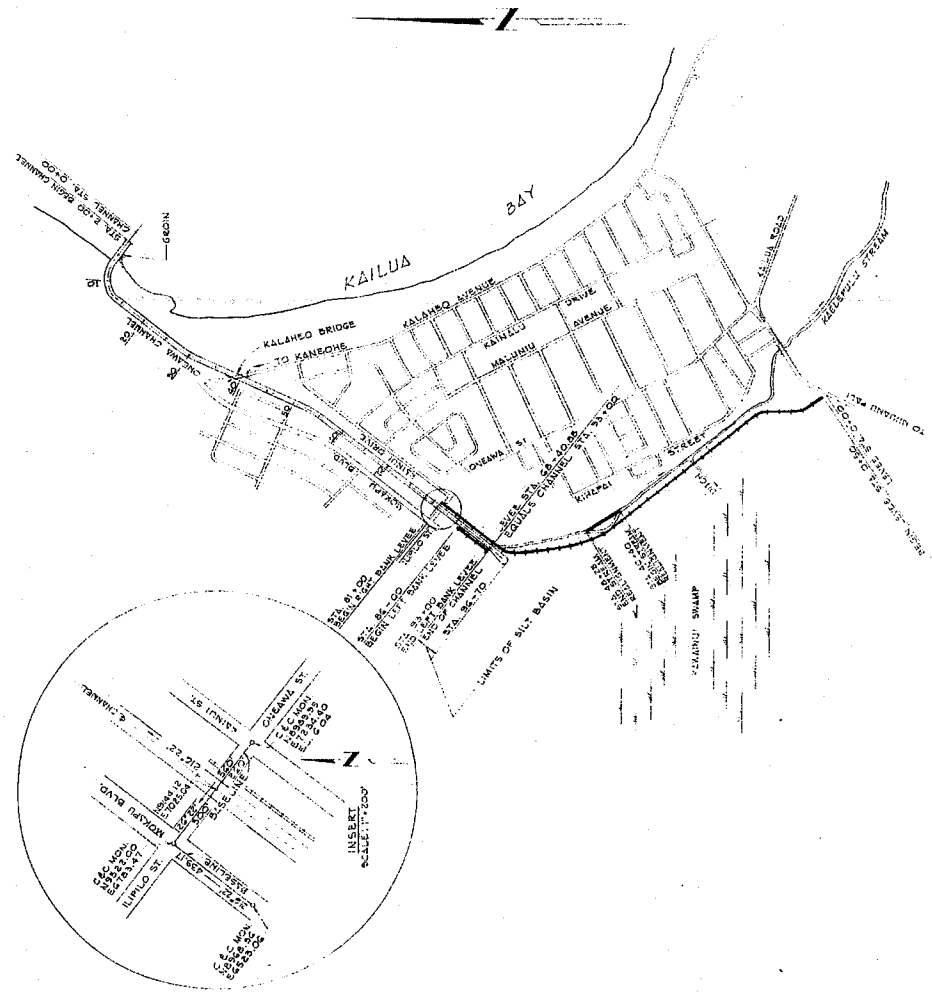


**KAWAINUI SWAMP**  
**KAILUA, OAHU**  
**FLOOD CONTROL PROJECT**  
**IMPROVEMENT AS CONSTRUCTED**  
 U.S. ARMY ENGINEER DISTRICT, HONOLULU  
 CORPS OF ENGINEERS  
 HONOLULU, HAWAII

APPENDIX 1-PLATE 1

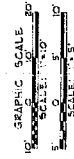
GRAPHIC SCALE  
 1" = 100'  
 1" = 200'  
 1" = 300'

2.1 IN  
 1" = 800'



**KAWAINUI SWAMP**  
**KAILUA, OAHU**  
**FLOOD CONTROL PROJECT**  
**IMPROVEMENT AS CONSTRUCTED**  
 U.S. ARMY ENGINEER DISTRICT, HONOLULU  
 CORPS OF ENGINEERS  
 HONOLULU, HAWAII

APPENDIX 1 - PLATE 1A



**SLOPE PROTECTION**  
 STA. 20+00 TO STA. 20+05  
 SCALE: 1" = 5'

**SLOPE PROTECTION**  
 STA. 20+05 TO STA. 20+10  
 SCALE: 1" = 5'

**RIPRAP SLOPE PROTECTION**  
 STA. 20+10 TO STA. 20+15  
 STA. 20+15 TO STA. 20+20 (LEFT BANK)  
 STA. 20+20 TO STA. 20+25 (LEFT BANK)  
 SCALE: 1" = 5'

**TYPICAL SECTION OF SLOPE PROTECTION**  
 STA. 20+00 TO STA. 20+05 (RIGHT BANK)  
 STA. 20+05 TO STA. 20+10 (CHANNEL LEFT BANK)  
 SCALE: 1" = 5'

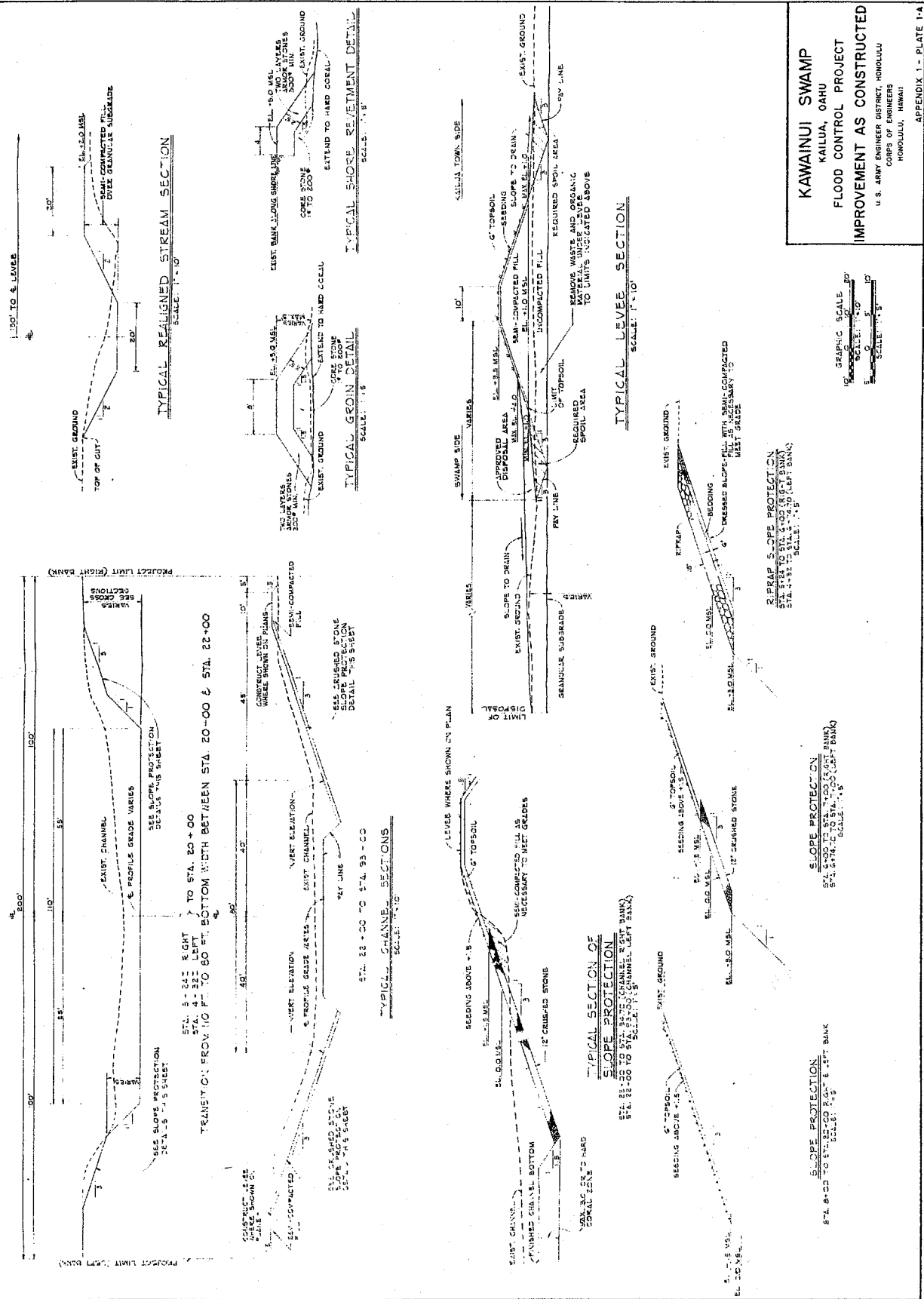
**TYPICAL LEVEL SECTION**  
 SCALE: 1" = 10'

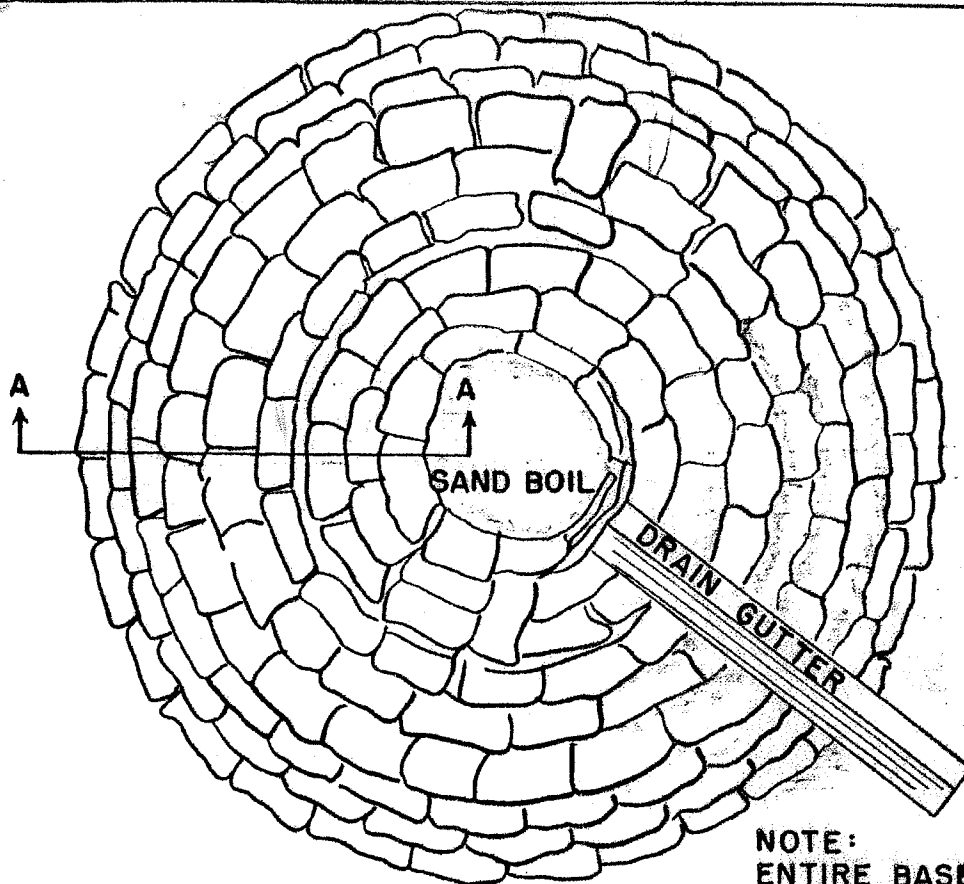
**TYPICAL CHANNEL SECTIONS**  
 STA. 22+00 TO STA. 22+20  
 SCALE: 1" = 10'

**TYPICAL SHORE RETAINMENT DETAIL**  
 SCALE: 1" = 5'

**TYPICAL GROUT DETAIL**  
 SCALE: 1" = 5'

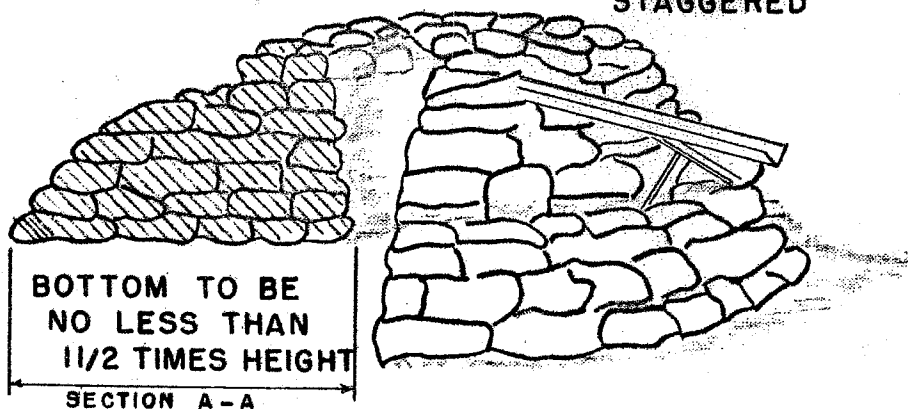
**TYPICAL REINFORCED STREAM SECTION**  
 SCALE: 1" = 10'





PLAN

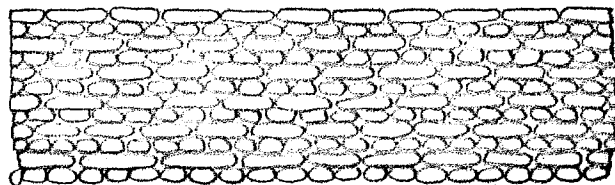
NOTE:  
ENTIRE BASE TO BE  
CLEARED OF DEBRIS  
AND SCARIFIED LOOSE  
EARTH TO BE USED  
BETWEEN ALL SACKS.  
ALL JOINTS TO BE  
STAGGERED



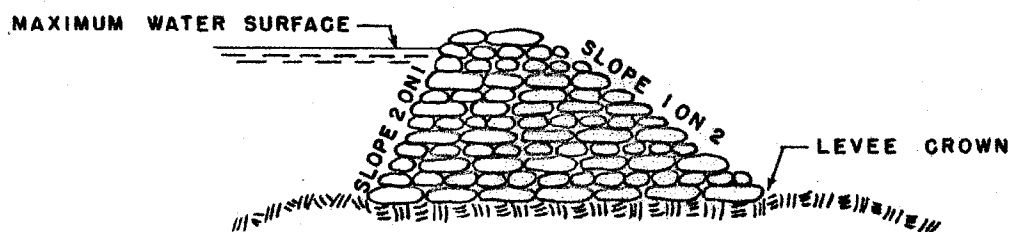
SECTIONAL ELEVATION

# METHOD OF RINGING SAND BOILS





RIVERWARD FACE



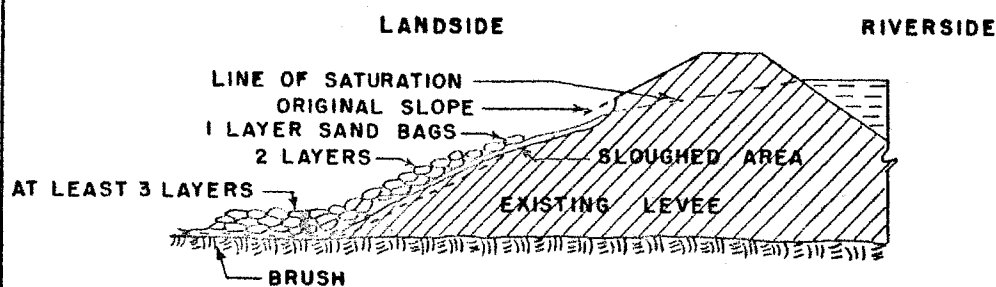
END SECTION

**NOTES:**

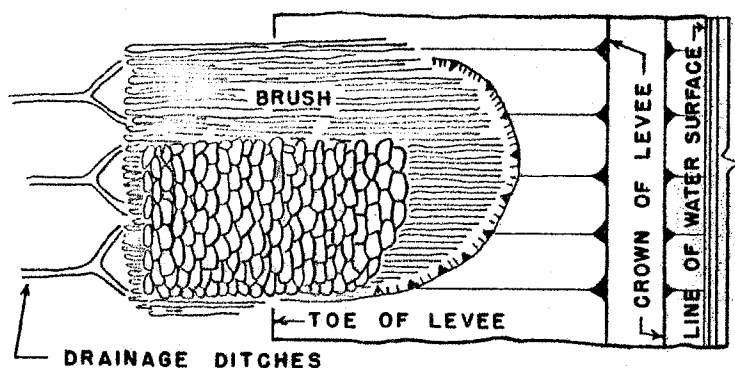
1. EACH SACK SHALL BE FILLED APPROXIMATELY 2/3 FULL OF EARTH AND END LEFT UNTIED.
2. PLACE LAYERS OF SACKS ALTERNATELY PARALLEL AND PERPENDICULAR TO CENTERLINE OF LEVEE.
3. ALTERNATE LAYERS OF RIVERWARD SACKS WILL BE PLACED WITH ENDS HANGING DOWN.
4. EACH SACK SHALL BE SECURELY SETTLED IN PLACED AND STAGGERED TO BREAK A CONTINUOUS LINE OF JOINTS.

BILL OF MATERIAL FOR 100 FT.	
HEIGHT	SACKS REQUIRED
1 FOOT	800
2 "	2400
3 "	4700

**CONSTRUCTION METHODS  
FOR  
HIGH WATER  
SACK TOPPING**



ELEVATION



PLAN

# CONSTRUCTION METHODS FOR HIGH WATER BRUSH MATTRESS

KAWAINUI SWAMP  
KAILUA, OAHU  
FLOOD CONTROL PROJECT

Semi-Annual Report

1. Date of this inspection \_\_\_\_\_
2. Date of last inspection \_\_\_\_\_
3. Have any unusual occurrences taken place since last periodic inspection?  
\_\_\_\_\_  
\_\_\_\_\_
4. Have the key operating personnel been changed? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. In your opinion, has this inspection revealed any necessary repairs?  
\_\_\_\_\_  
\_\_\_\_\_
6. Are an outline and schedule of anticipated repairs inclosed? \_\_\_\_\_  
\_\_\_\_\_
7. Names and addresses or locations of maintenance personnel  
\_\_\_\_\_  
\_\_\_\_\_
8. Telephone numbers for locating maintenance personnel -  
Day \_\_\_\_\_  
Night \_\_\_\_\_
9. Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_

APPENDIX II

KAWAINUI SWAMP  
KAILUA, OAHU  
FLOOD CONTROL PROJECT

Operation and Maintenance

Date \_\_\_\_\_

1. Has any seepage, saturated area or sand boils occurred? \_\_\_\_\_

If so, when? \_\_\_\_\_

2. Has any sloughing of embankment occurred? \_\_\_\_\_

If so, designate location. \_\_\_\_\_

3. When was sloughing noticed? \_\_\_\_\_ Has same been remedied? \_\_\_\_\_

4. Are embankments unprotected by riprap covered with vegetation? \_\_\_\_\_

If not, when is seeding contemplated? \_\_\_\_\_

5. Has stream channel been cleared of all obstructions? \_\_\_\_\_

If not, indicate action contemplated to be completed before  
normal flood season. \_\_\_\_\_

6. Explain any deviation or necessary work to be performed. \_\_\_\_\_

Inspected by: \_\_\_\_\_

APPENDIX II

AMENDMENT #1  
TO THE  
LOCAL COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND THE  
CITY AND COUNTY OF HONOLULU  
FOR CONSTRUCTION OF  
THE KAWAINUI MARSH FLOOD CONTROL PROJECT  
KAILUA, OAHU, HAWAII

This Amendment is entered into this 10th day of March, 19 94 by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), acting by and through the District Engineer, U.S. Army Engineer District, Honolulu, and the CITY AND COUNTY OF HONOLULU (hereinafter the "Local Sponsor"), acting by and through the Mayor,

WITNESSETH, THAT:

WHEREAS, the Government and the Local Sponsor, pursuant to Section 205 of the Flood Control Act of 1948, as amended, entered into a Local Cooperation Agreement (hereinafter the "Agreement") for the construction of the Kawainui Marsh Flood Control Project on October 3, 1993; and,

WHEREAS, the parties hereto desire to modify the terms of the Agreement of October 3, 1993 to require the Local Sponsor to deposit their cash contribution into an escrow account in lieu of cash payments made out to the Government;

NOW THEREFORE, the Parties agree to modify the Agreement of October 3, 1993, as follows:

1. Article VI is amended to read as follows:

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the cash payments required to meet the Local Sponsor's obligations under Article II of this Agreement. Total project costs are currently estimated to be \$10,500,000. In order to meet the Local Sponsor's share, the Local Sponsor must provide a cash contribution currently estimated to be \$5,020,000. The dollar amounts set forth in this Article are based upon the Government's best estimates which reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

**EXHIBIT "E"**



b. The Local Sponsor shall provide the Local Sponsor's required cash contribution during the period of construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Local Sponsor by 1 July of each year of the estimated funds that will be required from the Local Sponsor to meet the Local Sponsor's share of total project costs for the upcoming fiscal year.

2. No later than 60 calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's share of total project costs, including the Local Sponsor's share of costs attributable to the Project incurred prior to the initiation of construction. No later than 30 calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the required contribution by verifying to the satisfaction of the Government that the Local Sponsor has deposited the requisite amount in an escrow or other account acceptable to the Government, with interest accruing to the Local Sponsor.

3. For the second and subsequent fiscal years of Project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of the Local Sponsor's share of total project costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement.

4. As construction of the Project proceeds, the Government shall on a regular basis each year, adjust the amounts required to be provided under this paragraph to reflect actual costs to date. If at any time during the period of construction the Government determines that additional funds will be needed from the Local Sponsor, the Government shall so notify the Local Sponsor, and the Local Sponsor, no later than 60 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

c. The Government will draw on the escrow account provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as Project costs incurred by the Government prior to the initiation of construction.

d. During the period of construction, the Government shall provide quarterly financial reports on the status of total project cost and status of contributions made by the Local Sponsor. Upon completion of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the total project costs and tender to the Local Sponsor a final accounting of the Local Sponsor's share of total project costs.

1. In the event the total contribution by the Local Sponsor is less than the Local Sponsor's required share of total project costs, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Local Sponsor's required share of total project costs.

2. In the event the total contribution by the Local Sponsor is more than the Local Sponsor's required share of total project costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Local Sponsor; however, the Local Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.c.1. of the Agreement. In the event existing funds are not available to repay the Local Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Local Sponsor for excess contributions provided.

All provisions of the Local Cooperation Agreement entered into by the Government and the Local Sponsor on October 3, 1993, shall remain in effect unless specifically amended herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1, which shall become effective upon the date it is signed by the District Engineer, U.S. Army Engineer District, Honolulu.

THE DEPARTMENT OF THE ARMY

BY: 

M. BRUCE ELLIOTT  
LIEUTENANT COLONEL, U.S. ARMY  
DISTRICT ENGINEER

CITY AND COUNTY OF HONOLULU

BY: 

FRANK FASI  
MAYOR  
CITY AND COUNTY OF HONOLULU

DATE: March 10, 1994

DATE: March 10, 1994

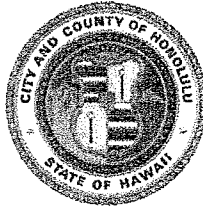
APPROVED AS TO FORM AND LEGALITY

BY: 

Deputy Corporation Counsel  
City and County of Honolulu  
Honolulu, Hawaii

DEPARTMENT OF PUBLIC WORKS  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET  
HONOLULU, HAWAII 96813



15 MAR 1994
HED <i>ME</i>
DHED <i>TD</i>
SECY.
CLK-TYP
<i>ED-PA</i>

*C.PH*

*[Signature]*  
15

Kenneth E. Sprague

DIRECTOR AND CHIEF ENGINEER

DEPUTY DIRECTOR

IN REPLY REFER TO:  
94-12-0064

FRANK F. FASI  
MAYOR

March 14, 1994

Lt. Col. M. Bruce Elliot  
Department of the Army  
U. S. Army Engineer District  
Building 230  
Fort Shafter, Hawaii 96858-5440

Dear Colonel Elliot:

Subject: Kawainui Marsh Flood Control Project, Local Cooperation Agreement,  
Amendment #1

Attached are two signed copies of Amendment #1. We will be making a direct deposit of our share to Bank of Hawaii.

If you have any questions, please call Laverne Higa at 527-6246.

Very truly yours,

*[Signature]*  
KENNETH E. SPRAGUE  
Director and Chief Engineer

Attach.

CONTRACT NO.

F 28264

UNITED STATES ARMY CORPS OF ENGINEERS  
CONTINUING AUTHORITIES PROGRAM

SECTION 205  
SINGLE PURPOSE  
STRUCTURAL  
FLOOD CONTROL PROJECT

\*\*\*\*\*

LOCAL COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE CITY AND COUNTY OF HONOLULU  
FOR CONSTRUCTION OF THE  
KAWAINUI MARSH FLOOD CONTROL PROJECT  
KAILUA, OAHU, HAWAII

THIS AGREEMENT, is entered into this 3rd day of October, 19 93, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the City and County of Honolulu (hereinafter referred to as the "Local Sponsor"), acting by and through the Mayor.

WITNESSETH THAT:

WHEREAS, the authority for the construction of the Kawainui Marsh Flood Control Project at Kailua, Oahu, Hawaii (hereinafter referred to as the "Project" and defined in Article I.a. of this Agreement), is contained in Section 205 of the Flood Control Act of 1948, as amended, 33 U.S.C. 701s; and

WHEREAS, Section 205 of the Flood Control Act of 1948, as amended, 33 U.S.C. 701s, limits the amount the Federal Government may expend on a single project to \$5,000,000;-and,

WHEREAS, construction of the Project is described in a report entitled "Final Detailed Project Report and Environmental Impact Statement for Kawainui Marsh Flood Control Project" jointly prepared by U.S. Army, Engineer District, Honolulu, and the City and County of Honolulu, dated July, 1992, and approved by the Chief, Planning Division, Directorate of Civil Works on 22 October 1992; and

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project; and,

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the Project; and,

WHEREAS, the Local Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines which implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, published in 33 C.F.R. sections 241.1-241.6 entitled "Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision"; and,

WHEREAS, the Local Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost-sharing and financing in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties agree as follows:

#### ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "Project" shall mean a 6,300-foot-long, 4-foot-high concrete floodwall on top of a raised levee, and creation of a 1.8 acre wetland, as generally described as plan 3A in the "Final Detailed Project Report and Environmental Impact Statement for Kawaiinui Marsh Flood Control Project" dated July, 1992 and approved by the Director of Civil Works on August 23, 1993.

b. The term "total project costs" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the Project. Such costs shall include, but not necessarily be limited to: costs of applicable engineering and design; costs of preparation of contract plans and specifications; actual construction costs; supervision and administration costs; costs of contract dispute settlements or awards; and the value of lands, easements, rights-of-way, utility and facility alterations or relocations, and dredged or excavated material disposal areas provided for the Project by the Local Sponsor, but shall not include any costs for betterments, operation, repair, maintenance, replacement, or rehabilitation.

c. The term "period of construction" shall mean the time from advertisement of the first construction contract to the time the Government Representative certifies in writing to the Local Sponsor that construction of the Project is complete. The Government Representative shall furnish to the Local Sponsor copies of the Government's Written Notice of Acceptance of Completed Work furnished to the contractor(s) for all contracts for the Project.

d. The term "Government Representative" shall mean the U.S. Army Engineer for the Honolulu Engineer District, or his or her designee.

e. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public road or way.

f. The term "relocations" shall mean the preparation of plans and specifications for, and the accomplishment of all, alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing railroads, highways, bridges, railroad bridges and approaches thereto, buildings, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation and maintenance of the Project.

g. The term "fiscal year" shall mean one fiscal year of the United States Government, unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

h. The term "involuntary acquisition" shall mean the acquisition of lands, easements, and rights-of-way by eminent domain.

i. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Government Representative in writing to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of construction of the entire Project. To be suitable for tender the Government Representative must determine that the completed portion of the Project can function independently and for a useful purpose, although the balance of the Project is not complete.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds provided by the Local Sponsor and appropriated by the Congress of the United States, shall expeditiously construct the Project (including relocations of railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. To the extent possible, the Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bid. To the extent possible the Local Sponsor will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the Local Sponsor, but contract awards, modifications, or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

b. After the Government determines that the Project or a functional portion of the Project is complete, and notifies the Local Sponsor in writing of such determination, the Government shall turn the Project or functional portion over to the Local Sponsor, which shall accept the Project or functional portion and be solely responsible for operating, repairing, maintaining, replacing, and rehabilitating the Project or functional portion of the Project in accordance with Article VIII hereof.

c. As further specified in Article VI hereof, the Local Sponsor shall provide, during the period of construction, a cash contribution of 5 percent of total project costs.

d. As further specified in Article III hereof, the Local Sponsor shall provide all lands, easements, rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations (excluding railroad bridges and approaches thereto) determined by the Government to be necessary for construction of the Project. At its sole discretion, the Government may perform relocations in cases where it appears that the Local Sponsor's contributions will exceed the maximum non-Federal cost share set out in Article VI.f., subject to the Federal limitation set out in Article II.f.

e. If the value of the contributions provided under paragraphs c. and d. of this Article represents less than 25 percent of total project costs, the Local Sponsor shall provide, during the period of construction, an additional cash contribution in the amount necessary to make its total contribution equal to 25 percent of total project costs.

f. The Government's participation in the Project, including all planning studies costs, has a statutory limitation of \$5,000,000. The Local Sponsor shall be responsible for all costs in excess of the aforementioned amount.

g. No Federal funds may be used to meet the Local Sponsor's share of project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

h. The Local Sponsor agrees to participate in and comply with applicable Federal flood plain management and flood insurance programs.

i. The Local Sponsor shall comply with all items of local cooperation set out in the aforementioned report entitled "Final Detailed Project Report and Environmental Impact Statement for Kawainui Marsh Flood Control Project" jointly prepared by U. S. Army Engineer District, Honolulu, and the City and County of Honolulu, dated July 1992, and approved by the Chief, Planning Division, Directorate of Civil Works on 22 October 1992.

### ARTICLE III - LANDS, FACILITIES, AND PUBLIC LAW 91-646 RELOCATION ASSISTANCE

a. The Local Sponsor shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, as may be determined by the Government to be necessary for the construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way may be provided incrementally, but all lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.



b. The Local Sponsor shall provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged material disposal areas necessary for construction of the Project.

c. Upon notification from the Government, the Local Sponsor shall accomplish or arrange for accomplishment at no cost to the Government all relocations (excluding railroad bridges and approaches thereto) determined by the Government to be necessary for construction of the Project.

d. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way for construction and subsequent operation and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act. The Local Sponsor shall provide such documentation as the Government Representative requires to demonstrate compliance.

#### ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. The Local Sponsor shall not receive credit for lands, easements and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, previously provided as an item of cooperation for another Federal project, nor shall the value thereof be included in the total project cost. The value of the lands, easements, and rights-of-way to be included in total project costs and credited toward the Local Sponsor's share of total project costs will be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date the first construction contract for the Project is awarded, the credit shall be the fair market value of the interest at the time of such award. The fair market value shall be determined by an appraisal, to be obtained by the Local Sponsor, which has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Government.

2. If the lands, easements, or rights-of-way are to be acquired by the Local Sponsor after the date of award of the first construction contract for the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1. of this Agreement. If the Local Sponsor pays an amount in excess of the appraised fair market value, it may be entitled to a credit for the excess if the Local Sponsor has secured prior written approval from the Government of its offer to purchase such interest.

3. If the Local Sponsor acquires more lands, easements, or rights-of-way than are necessary for project purposes, as determined by the Government, then only the value of such portions of those acquisitions as are necessary for project purposes shall be included in total project costs and credited toward the Local Sponsor's share.

4. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements that have received prior written Government approval.

5. Credit for lands, easements, or rights-of-way acquired by the Local Sponsor within a five-year period preceding the date this Agreement is signed, or at any time after this Agreement is signed, will also include the actual incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

b. The costs of relocations which will be included in total project costs and credited toward the Local Sponsor's share of total project costs shall be that portion of the actual costs as set forth below, and approved by the Government:

1. Highways and Highway Bridges: Only that portion of the cost as would be necessary to construct substitute bridges and highways to the design standard that the State of Hawaii would use in constructing a new bridge or highway under similar conditions of geography and traffic loads.

2. Utilities and Facilities (including railroads): Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the cost of betterments. With respect to betterments, new materials shall not be used in any alteration or relocation if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be included in total project costs, nor credited toward the Local Sponsor's share.

#### ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication between the Local Sponsor and the Government during the period of construction, the Local Sponsor and the Government shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to construction of the Project. The Local Sponsor will be informed of any changes in cost estimates.

b. The representatives appointed above shall meet as necessary during the period of construction and shall make such recommendations as they deem warranted to the Government Representative.

c. The Government Representative shall consider the recommendations of the representatives in all matters relating to construction of the Project, but the Government Representative, having ultimate responsibility for construction of the Project, has complete discretion to accept, reject, or modify the recommendations.

#### ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, cash payments required to meet its obligations under Article II of this Agreement. Total project costs are currently estimated to be \$10,500,000. In order to meet its cash payment requirements, the Local Sponsor must provide a cash contribution currently estimated to be \$5,020,000. The dollar amounts set forth in this Article are based upon the Government's best estimates which will reflect projection of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The required cash contribution shall be provided as follows: 120 calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's estimated share of project costs, including its share of costs attributable to the Project incurred prior to the initiation of construction. Within 60 calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, Pacific Ocean" to the Government Representative, Honolulu Engineer District, representing the Government. In the event that total project costs are expected to exceed the estimate given at the outset construction, the Government shall immediately notify the Local Sponsor of the additional contribution the Local Sponsor will be required to make to meet its share of the revised estimate. Within 45 calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the additional required contribution.

c. The Government will draw on the funds provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as costs incurred by the Government prior to the initiation of construction.

d. Upon completion of the Project and final determination of the costs associated with all relevant contract claims and court actions, including appeals, the Government shall compute the total project costs and tender to the Local Sponsor a final accounting of the Local Sponsor's share of total project costs. In the event the total contribution by the Local Sponsor is less than its minimum required share of total project costs, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its minimum required share of total project costs.

e. In the event the Local Sponsor has made cash contributions in excess of 5 percent of total project costs and that result in the Local Sponsor's having provided more than its minimum required share of total project costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the said excess to the Local Sponsor; however, the Local Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.c. of this Agreement.

f. If the Local Sponsor's total contribution under this Agreement (including lands, easements, rights-of-way, and relocations, and suitable borrow and dredged material disposal areas provided by the Local Sponsor) exceeds 50 percent of total project costs, the Government shall, subject to the availability of appropriations for that purpose, and subject to the Federal limitation set out in Article II.f., refund the excess to the Local Sponsor no later than 90 calendar days after the final accounting is complete.

#### ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

#### ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION

a. After the Government Representative has determined that construction of the Project or functional portion of the Project is complete and has provided the Local Sponsor with written notice of such determination, the Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the completed Project, or functional portion of the Project, at no cost to the Government, in accordance with applicable Federal and State laws as provided in Article XII and specific directions prescribed by the Government in an OMRR&R Manual and any subsequent amendments thereto.

b. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the Local Sponsor owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Local Sponsor for any reason is failing to fulfill the Local Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If after 30 days from receipts of notice, the Local Sponsor continues to fail to perform, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate

to relieve the Local Sponsor of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

c. The Local Sponsor shall prevent any future encroachments that might interfere with proper functioning of the project and secure Corps of Engineers' review and written approval of any planned marsh modification, including resource management plans, for hydraulic compatibility.

#### ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE X - MAINTENANCE OF RECORDS

The Government and the Local Sponsor shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the Local Sponsor shall maintain such books, records, documents, and other evidence for a minimum of three years after completion of construction of the Project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

#### ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit when appropriate of the Local Sponsor's records for the Project to ascertain the allowability, reasonableness, and allocability of its costs for inclusion as credit against the non-Federal share of project costs.

#### ARTICLE XII - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations, including section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

#### ARTICLE XIII - RELATIONSHIP OF PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

#### ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

#### ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

The Local Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Local Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears, unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

b. If the Government fails to receive annual appropriations for the Project in amounts sufficient to meet project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After

60 calendar days either party may elect without penalty to terminate this Agreement pursuant to this Article or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI. of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

c. Notwithstanding any other provision of this Agreement; if by awarding any contract for the construction of the Project the Government would incur total fiscal obligations for construction of the Project in excess of \$10,020,000, award of that contract and subsequent contracts shall be deferred until such time as the Government and the Local Sponsor proceed with future contract awards for the Project.

#### ARTICLE XVII - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Sponsor:

Office of the Mayor  
530 South King Street  
Honolulu, Hawaii 96813

If to the Government:

District Engineer  
U.S. Army Engineer District, Honolulu  
Building 230  
Fort Shafter, Hawaii 96858-5440

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.



c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

#### ARTICLE XVIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

#### ARTICLE XIX - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Contracting Officer, the Local Sponsor shall perform, or cause to be performed, such environmental investigations as are determined necessary by the Government or the Local Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Local Sponsor which are properly allowable and allocable to performance of any such environmental investigations shall be included in total project costs and cost shared as a construction cost in accordance with Section 103 of Public Law 99-662.

b. In the event it is discovered through an environmental investigation or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the Local Sponsor and the Government shall provide prompt notice to each other, and the Local Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

c. The Government and the Local Sponsor shall determine whether to initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the Local Sponsor determine to proceed or continue with construction after considering any liability that may arise under CERCLA, as between the Government and the Local Sponsor, the Local Sponsor shall be responsible for any and all necessary clean up and

response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs as defined in this Agreement. In the event the Local Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge its responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVI of this Agreement.

d. The Local Sponsor and the Government shall consult with each other under the Construction Phasing and Management Article of this Agreement to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph c of this Article shall not relieve any party from any liability that may arise under CERCLA.

e. The Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner so that liability will not arise under CERCLA.

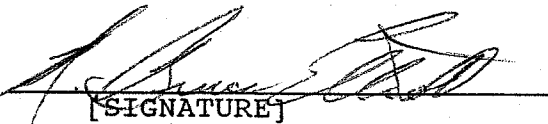
#### ARTICLE XX - APPROVAL OF AGREEMENT

The U.S. Army Engineer for the Honolulu Engineer District, is authorized to execute this Agreement on behalf of the Government, provided no modification is made to this Agreement other than completion in accordance with the bracketed instructions. If any such modification is made, this Agreement shall be subject to the written approval of the Assistant Secretary of the Army (Civil Works) and is not binding on the Government until so approved.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as of the day and year first above written.


THE DEPARTMENT OF THE ARMY

BY:

  
[SIGNATURE]  
M. BRUCE ELLIOTT  
LIEUTENANT COLONEL, U.S. ARMY  
DISTRICT ENGINEER

THE CITY AND COUNTY OF HONOLULU

BY:

  
[SIGNATURE]  
FRANK F. FASI  
MAYOR  
CITY AND COUNTY OF HONOLULU

DATE: October 3, 1993

DATE: September 27, 1993

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_ do hereby certify that I am the principal legal officer of the City and County of Honolulu, that the City and County of Honolulu is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City and County of Honolulu in connection with the Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the City and County of Honolulu have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

RONALD G. MUN

\_\_\_\_\_  
[SIGNATURE]

RONALD G. MUN

\_\_\_\_\_  
[TYPED NAME]

Corporation Counsel  
City and County of Honolulu

Form DF-74  
(Dec. 1973)

### CERTIFICATE

The attached contract for Local Cooperation Agreement for Construction of the

Kawainui Marsh Flood Control Project

(\$5,020,000.00)

is hereby approved as to availability and designation of funds, and certification is hereby made that there is a valid appropriation from which expenditures to be made under said contract may be made and that sufficient unencumbered funds are available in the Treasury of the City and County of Honolulu to the credit of such appropriation to pay the amounts of such expenditures when the same become due and payable.

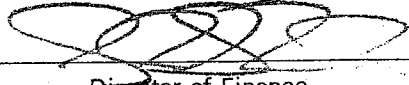
DEPARTMENTAL CONTRACT NO. \_\_\_\_\_ HONOLULU, HAWAII

FUND GENERAL IMPROVEMENT BOND

610/4744-93-20054B \$5,000,000.00

ACCOUNT NO. 610/5405-94-20054B 20,000.00 (4250)

FINANCE DEPT. NO. F28264

  
\_\_\_\_\_  
Director of Finance

For

# CERTIFICATION REGARDING LOBBYING

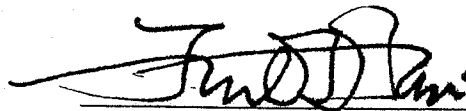
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



FRANK F. FASI  
MAYOR  
CITY AND COUNTY OF HONOLULU

Date: \_\_\_\_\_

# CERTIFICATION REGARDING LOBBYING

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(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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DEPARTMENTAL CONTRACT NO. \_\_\_\_\_ HONOLULU, HAWAII

FUND GENERAL IMPROVEMENT BOND  
610/4744-93-20054B \$5,000,000.00  
ACCOUNT NO. 610/5405-94-20054B 20,000.00 (4250)

FINANCE DEPT. NO. F28264

For

Director of Finance



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, HONOLULU  
FORT SHAFTER, HAWAII 96858-5440

REPLY TO  
ATTENTION OF:

June 1, 2006

Civil and Public Works Branch  
Programs and Project Management Division

Mr. Peter T. Young, Chairperson  
State of Hawaii  
Department of Land and Natural Resources  
Post Office Box 621  
Honolulu, Hawaii 96809

Dear Mr. Young:

I was pleased to talk to you on Friday, May 26, 2006, about the Kawainui Marsh Flood Control Project. As discussed, the Local Cooperation Agreement (LCA) is enclosed for your information. The LCA was signed on October 3, 1993 between the U.S. Army Corps of Engineers and the City and County of Honolulu (City), prior to construction of the Kawainui Marsh Flood Control Project. The current terminology of an LCA is Project Cooperation Agreement (PCA). Also included for your information is the "Kawainui Swamp Flood Protection Works' Operation and Maintenance (O&M) Manual" for the original project construction, which is referenced in the LCA. The O&M Manual, dated June 26, 1964, describes the operational and maintenance requirements of the City for the completed project, which the City has agreed to carry out.

The State of Hawaii may acquire flood control maintenance responsibilities by separate agreement with the City. However, the overall legal responsibility will remain with the City.

I am forwarding a copy of this letter to your Chief Engineer, Mr. Eric T. Hirano, Department of Land and Natural Resources, State of Hawaii, 1151 Punchbowl Street, Honolulu HI 96813. Please contact me at (808) 438-1634 if we need to discuss these issues further.

Sincerely,

James L. Bersson, P.E.  
Deputy District Engineer for  
Programs and Project Management

Enclosures

EXHIBIT "H"

**SUBJECT**  
TMK (1) 4-2-16:05

FIRST	DIVISION
4	2
ZONE	SEC
16	16
PLAT	PARCEL
16	16
CONTAINING	
SCALE: 1"=500'	

**SUBJECT**  
TMK (1) 4-2-016:06 por.

Area Makai of Levee  
Per Act 47, Not  
Included in  
Conveyance

**SUBJECT**  
TMK (1) 4-2-16: por. 01

General Location of  
Model Airplane Field  
Not Included in Conveyance  
TMK (1) 4-2-16: por 01

**EXHIBIT "A"**

Amended